



September 10, 2002

Ms. Linda Steffen  
Police Records Administrator  
Azle Police Department  
613 Southeast Parkway  
Azle, Texas 76020

OR2002-5051

Dear Ms. Steffen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168399.

The Azle Police Department (the "department") received a request for copies of information pertaining to a specified person for May 2002. You claim that the submitted information is excepted from disclosure pursuant to section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Initially, we note that section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses the common-law right to privacy. Information must be withheld from disclosure under section 552.101 in conjunction with the common-law right to privacy when (1) the information is highly intimate or embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989). We note that the requestor in this instance is requesting copies of unspecified information in which the specified individual is identified. Therefore, the request requires the department to compile

reports relating to this individual. Based on the reasoning set out in *Reporters Committee*, we conclude that such a compilation implicates the specified individual's right to privacy to the extent that it includes arrests and investigations where the named individual is a suspect in a case. Accordingly, we conclude that the department must withhold from disclosure the requested information pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy to the extent that the information reveals that the specified individual is a suspect, arrestee, or defendant in a case.

Section 552.108 of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted . . . if:

. . .

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(2). Section 552.108(a)(2) protects records pertaining to a criminal investigation or prosecution that concluded in a final result other than conviction or a deferred adjudication. Based on our review of the submitted information, we understand that the information pertains to a criminal investigation that did not result in conviction or deferred adjudication.

We note that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. See Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976) (summarizing the types of basic information that must be made available to the public). Generally, a detailed description of an offense must be released as basic information. However, we also note that some portions of this description, which we have marked, implicate the specified individual's common-law right to privacy. The types of information considered intimate and embarrassing in *Industrial Foundation* include, for example, information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. See *Industrial Foundation*, 540 S.W.2d 668 at 683. Accordingly, the department must withhold from disclosure the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. With the exception of the remaining basic information that must be released to the requestor, we conclude that the department may withhold the submitted information from disclosure pursuant to section 552.108 of the Government Code.

In summary, the department must withhold from disclosure the requested information pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy to the extent that the information reveals that the specified individual is a suspect, arrestee, or defendant in a case. The department must withhold from disclosure the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. With the exception of the remaining basic information that must be released to the requestor, we conclude that the department may withhold the submitted information from disclosure pursuant to section 552.108 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

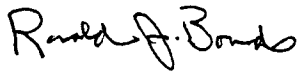
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/seg

Ref: ID# 168399

Enc. Submitted documents

cc: Mr. Maricio Lopez  
9770 Bennet Lawson Road  
Mansfield, Texas 76063  
(w/o enclosures)